

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**  
JAN 21 2004  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

WILLIAMS COMMUNICATIONS, LLC

Plaintiff,

vs.

BROADBAND TELCOM POWER, INC.,

Defendant.

**04CV043 P (C)**

No. (Tulsa County,  
No. CJ-2003-07455)

NOTICE OF REMOVAL

Pursuant to the provisions of 28 U.S.C. §§1441 and 1446 et seq., Defendant, Broadband Telcom Power, Inc., files this Notice of Removal to the United States District Court for the Northern District of Oklahoma to remove the civil action filed against the Defendant from the District Court of Tulsa County, State of Oklahoma. In support hereof, Defendant, Broadband Telcom Power, Inc., states:

1. Plaintiff, Williams Communications, LLC, is a Delaware corporation.
2. Defendant, Broadband Telcom Power, Inc., is a California corporation.
3. The proceeding was initiated by Plaintiff filing a Petition in the District Court of Tulsa County, Oklahoma, on November 26, 2003, asserting a claim against Broadband Telcom Power, Inc. under a theory of strict tort liability.
4. Defendant, Broadband Telcom Power, Inc., received service of summons with a copy of Plaintiff's Original Petition on December 31, 2003.
5. Counsel for Plaintiff on November 24, 2003, provided in writing to counsel of Broadband Telcom Power, Inc., a formal settlement demand letter outlining the extent of Plaintiff's alleged injuries and extending an offer to settle the claim for \$600,000.00, an amount greatly in excess of \$75,000.

6. By reason of the foregoing, this Court would have original diversity jurisdiction of this action under the provisions of 28 U.S.C. §1332. Therefore, the action is removable to this Court under the provisions of 28 U.S.C. §1441.

7. Venue is proper in this district because the Northern District of Oklahoma of the United States District Court embraces Tulsa County, the place where the action is currently pending.

8. Attached as Exhibit "A" are copies of the process, pleadings and orders filed in the District Court of Tulsa County, State of Oklahoma, in this action.

9. Attached as Exhibit "B" is a copy of the formal settlement demand letter provided by Plaintiff's counsel.

ABOWITZ, TIMBERLAKE & DAHNKE, P.C.

P.O. Box 1037

Oklahoma City, OK 73101

Telephone : (405) 236-4645

Facsimile : (405) 239-2843

By 

Murray E. Abowitz, OBA #000117

Attorney for Defendant,

BROADBAND TELCOM POWER, INC.

JURY TRIAL DEMANDED

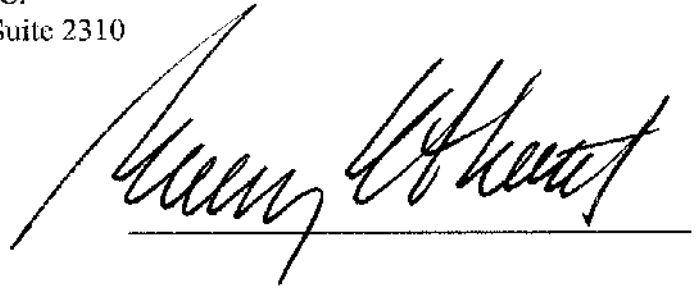
CERTIFICATE OF SERVICE

This is to certify that on this 11<sup>th</sup> day of January, 2004, a true and correct copy of the above and foregoing was mailed to:

Counsel for Plaintiff:

Paul Harris  
Harris & Coffey, PLLC  
300 N.W. 13<sup>th</sup> St., Suite 100  
Oklahoma City, OK 73103  
(405) 236-2600

Robert D. Brown  
Donato, Minx & Brown, P.C.  
3200 Southwest Freeway, Suite 2310  
Houston, TX 77027-7525  
(713) 877-1112



DOCKETED

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

WILLIAMS COMMUNICATIONS, LLC

VS.

FOUNDRY NETWORKS, BROADBAND  
TELCOM POWER, INC., XP-FORESIGHT,  
INC., AND OKLAHOMA ELECTRIC  
SUPPLY COMPANY

§  
§  
§  
§  
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§  
§  
§  
§

CJ 2003 07455

Cause No. \_\_\_\_\_

DORIS L. FRANSEIN

To Broadband Telcom Power, a California corporation:

c/o James L. Lau  
1719 South Grand Ave.  
Santa Ana, CA 92705

You have been sued by Williams Communications, L.L.C., Plaintiff in the court indicated above. The nature of the suit against you is stated in the petition which is attached to this summons. It also states the demand made against you by the plaintiff.

You are directed to deliver or mail your written answer to the attached petition to the attorney for the plaintiff within twenty (20) days after service of this summons upon you, exclusive of the date of service. A copy of your answer must also be filed with the court indicated above either before service of your answer or within a reasonable time thereafter.

Unless you answer the petition within the time stated, judgment will be rendered against you together with costs of the action.

SALLY HOWE SMITH, COURT CLERK

Court Clerk

by

*Richard*, Deputy Court Clerk

Attorney(s) for Plaintiff:

DONATO, MINX & BROWN, P.C.

Robert D. Brown  
Texas Bar No. 03164715  
3200 Southwest Freeway, Suite 2310  
Houston, TX 77027-7525  
(713) 877-1112  
FAX # (713) 877-1138

EXHIBIT A

This summons was served on \_\_\_\_\_  
(date of service)

\_\_\_\_\_  
(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH  
THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED  
IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED  
IN THIS SUMMONS.

DORIS L. FRANSEIN

DISTRICT COURT  
**FILED**

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

NOV 26 2003

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

WILLIAMS COMMUNICATIONS, LLC §  
§  
VS. §  
§  
BROADBAND TELCOM POWER, INC §

CJ Cause No. 2003-07455

**PLAINTIFF'S ORIGINAL PETITION**

DORIS L. FRANSEIN

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, WILLIAMS COMMUNICATIONS, LLC (hereinafter referred to as "Williams") Plaintiff in the above entitled and numbered cause, complaining of BROADBAND TELCOM POWER, INC., Defendant, and for good cause would respectfully show the following:

**1. PARTIES**

- A. Plaintiff, Williams, is a Delaware corporation doing business in Oklahoma.
- B. Defendant, Broadband Telcom Power, Inc. is a California corporation and may be served with service of process through its registered agent for service, James L. Lau, 1719 South Grand Ave., Santa Ana, CA 92705.

**FACTS**

2. The incident occurred in William's testing laboratory in Tulsa, Oklahoma on or about July 31, 2001. On or about said date, a DC power supply, said product having been manufactured by defendant Broadband Telcom Power, Inc., failed causing a fire which damaged plaintiff's property.

### **PRODUCTS LIABILITY**

3. Plaintiff realleges Sections 1-2 as if set forth in its entirety and are incorporated herein for all purposes. Plaintiff would show that Defendant, Broadband Telecom Power, Inc., is liable under the theory of strict tort liability. Defendant was at all times material hereto engaged in the business of designing, manufacturing, assembling, distributing, selling, constructing, selecting, furnishing, leasing, licensing, and/or supplying the product. The product, which caused injuries to Plaintiff, was in a defective condition at the time it was designed, manufactured, assembled, constructed, distributed, selected, sold, furnished, licensed, supplied and/or leased by Defendant. Defendant was a manufacturer and seller engaged in the business of introducing the aforementioned product into the stream of commerce. Defendant failed to give adequate warning to Plaintiff of the product's dangers. The aforementioned design, manufacturing and marketing defects were present at the time the product left the possession of Defendant. The product was defective and reached Plaintiff without substantial change in its condition from the time it was originally sold. These defects rendered each product unreasonably dangerous. Said defective condition was a producing cause of the injuries sustained by Plaintiff made the basis of this suit. For these reasons, Defendant is strictly liable to Plaintiff under applicable products liability law without regard to or proof of negligence and gross negligence. However, if it be necessary, Plaintiff would show that the product in question was designed, selected, manufactured, assembled, constructed, distributed, sold, furnished, supplied, licensed, and/or leased by Defendant in a negligent, grossly negligent and defective condition and such negligence, gross negligence and defective conditions were a producing and proximate cause of the damages sustained by Plaintiff.

### **CAUSATION**

4. Each act and omission detailed above constituted a proximate and/or producing cause of the damages suffered by your Plaintiff herein.

### **DAMAGES**

5. Plaintiff realleges Sections 1-4 as if set forth in its entirety and are incorporated herein for all purposes. In the occurrence made the basis of this suit Plaintiff sustained substantial property damages, reasonable mitigation expenses, and business interruption loss ("Damages") caused by the conduct of Defendant alleged herein in excess of \$10,000. Plaintiff is further assignee of the rights of Foundry Networks, who suffered damages in excess of \$10,000, in the fire.

Plaintiff would additionally say and show that it is entitled to recovery of attorney's fees and pre-judgment and post-judgment interest in accordance with law and equity as part of their damages herein. Plaintiff does not waive any other applicable theories of liability and reserve the right to add all additional theories of liability/causes of action in the future against all parties and to add other parties.

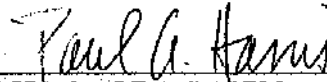
### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays Defendant be cited to appear and answer herein, that upon final trial hereof Plaintiff obtain judgment against this Defendant, that Plaintiff recover its damages as more fully described herein, punitive damages to be determined by the trier of fact not to exceed any statutory limitations, costs of Court herein expended, additionally, that Plaintiff recover pre-judgment and post-judgment interest to which it is entitled to by law, attorney's fees, costs of Court, and for such other and further relief, both general and special, in law and in equity, to which it may show itself justly entitled.



Signature Page to Plaintiff's Original Petition, District Court of Tulsa County

Respectfully submitted,



Paul Harris, OBA # 14733  
Harris & Coffey, PLLC  
300 N.W. 13<sup>th</sup> St., Ste. 100  
Oklahoma City, OK 73103  
405-236-2600  
FAX # 405-236-2607

DONATO, MINX & BROWN, P.C.  
Robert D. Brown  
Texas Bar No. 03164715  
3200 Southwest Freeway, Suite 2310  
Houston, TX 77027-7525  
(713) 877-1112  
FAX # (713) 877-1138

Attorneys for Plaintiff

**JURY TRIAL DEMANDED**

DONATO, MINX & BROWN, P.C.  
3200 SOUTHWEST FREEWAY, STE. 2310  
HOUSTON, TX 77027  
PHONE: (713) 877-1112 REF. NO: C0300000047933  
ATTORNEY FOR:

JAN 29 2004

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

CASE NO: CJ200307455  
PROOF OF SERVICE

PLAINTIFF: WILLIAMS COMMUNICATIONS  
DEFENDANT: BROADBAND TELCOM POWER INC

HEARING DATE: - - TIME: DEPT/DIV:

1. AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED COPIES OF THE:  
CITATION; PETITION
2. A. PARTY SERVED: BROADBAND TELCOM POWER INC  
B. PERSON SERVED: ETIENNE VAN BALLEGOOYEN, AUTHORIZED AGT  
C. ADDRESS: 1719 SOUTH GRAND AVE.  
SANTA ANA, CA 92705
3. I SERVED THE PARTY NAMED IN ITEM 2  
A. BY PERSONALLY DELIVERING THE COPIES  
(1) ON: 12-31-03  
(2) AT: 0930 HRS
4. THE "NOTICE TO THE PERSON SERVED" (ON THE SUMMONS) WAS COMPLETED AS FOLLOWS:
5. PERSON SERVING: A. FEE FOR SERVICE: \$40.00  
B. DARSOW, #6000  
CENTRAL DIVISION  
909 N. MAIN STREET, SUITE 2  
SANTA ANA, CA 92701  
(714) 569-3700
7. I AM A CALIFORNIA SHERIFF AND I CERTIFY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 01-05-04

MICHAEL S. CARONA, SHERIFF-CORONER

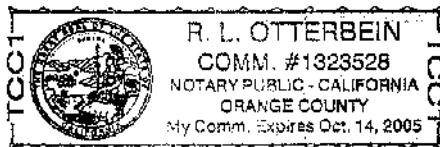
Lina Darsow #6000

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

No. 5907

State of CALIFORNIACounty of ORANGEOn 1-6-04 before me, R. L. OTTERBEIN, NOTARY PUBLIC  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"personally appeared B. DARROW #6000  
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

R. L. Otterbein

SIGNATURE OF NOTARY

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☒ OTHER:

ORANGE COUNTY SHERIFF  
COURT OPERATIONS

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

Orange County Sheriff  
23141 Moulton Pkwy, Ste 120  
Laguna Hills, Ca 92653

**DESCRIPTION OF ATTACHED DOCUMENT**CJ 200307435

Proof of Service  
 TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

1-5-4  
 DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

11/24/2003 13:52 FAX 713 877 1138

DONATO\_MINX\_BROWN

001/001

**DONATO, MINX & BROWN, P.C.**  
**LAWYERS**

3200 Southwest Freeway, Suite 2310

Houston, Texas 77027-7525

e-mail: [bbrown@donatominxbrown.com](mailto:bbrown@donatominxbrown.com)

[www.donatominxbrown.com](http://www.donatominxbrown.com)

**ROBERT D. BROWN**  
Direct Dial: (713) 871-1165

Telephone: (713) 877-1112  
Facsimile: (713) 877-1138

November 24, 2003

Murray Abowitz  
Abowitz, Timberlake & Dahnke  
105 North Hudson, Tenth Floor  
Oklahoma City, OK 73102

FAX # 405-239-2843

RE: Insured : Williams Communications, LLC  
D/Loss : 7/30/01 - Fire Loss  
CTS Ref. No. : 2092-790/RMH

Dear Murray:

Please allow this to serve as a formal settlement demand on the above referenced case specific to your client, BTC. I have reached settlement with Foundry, OESCO, and XP Foresight for a total payment of \$350,000 on this case. Additionally, Foundry has assigned to us their claim for \$289,000 in property damages, arising out of the damage to their Big Iron Unit. That brings the total damages for which I will be seeking from your client to over \$1.5 million, subject to a potential \$350,000 credit. Suit will be filed against your client on or before November 27, 2003. We will accept the sum of \$600,000 from BTC in full and final settlement of the claim. Otherwise, we will proceed with service and will move forward with the litigation.

Please contact me if you have any questions regarding the above. Otherwise, I look forward to hearing your client's response to this demand.

Sincerely,

Robert D. Brown

RDB/ph  
ltr abowitz 11-24-03

**EXHIBIT B**